

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

January 30, 2007

Jerome B. Reed
SBI No.
Delaware Correctional Center
P.O. Box 500
Smyrna, DE 19977

RE: State of Delaware v. Jerome B. Reed
Def. ID# 0101023931

Memorandum Opinion - Motion for Postconviction Relief

Date Submitted: October 13, 2006

Dear Mr. Reed:

This is my decision on your third motion for postconviction relief. You were convicted of Robbery in the First Degree, Possession of a Firearm During the Commission of a Felony, Kidnaping in the Second Degree, two counts of Burglary in the Second Degree, two counts of Theft, and Criminal Mischief. The convictions were affirmed by the Supreme Court on June 21, 2002. The convictions arose out of your robbery of Cecil Bounds on July 25 and 29, 2001.

You allege in your third motion for postconviction relief that (1) the evidence was not sufficient to support your robbery conviction, (2) the trial court erred by not instructing the jury on “intentionally,” regarding the kidnaping charge, (3) the trial court erred by not instructing the jury on “accessibility,” regarding the firearm charge, and (4) the evidence was not sufficient to establish the element of “restraint” for the kidnaping conviction. At the conclusion of your motion, you allege that these errors demonstrate that your counsel’s efforts to represent you were deficient.

Your claims of ineffective assistance of counsel were known to you and could have been raised by you in your first motion for postconviction relief. Therefore, they are barred by Superior Court Criminal Rule 61(i)(2). In order to avoid the procedural bar of Rule 61(i)(2), you must demonstrate that the consideration of your claims is warranted in the “interest of justice.” The “interest of justice” exception is a narrow one. In order to invoke the “interest of justice” exception, you must show that “subsequent legal developments have revealed that the trial court lacked the authority to convict or punish [you].”¹ A factual development may also trigger the “interest of justice” exception. For example, in *Weedon v. State*² several of the prosecution’s witnesses recanted their statements, thereby defeating the presumption that Weedon’s motion for postconviction relief was procedurally barred.³ Moreover, the bar to relief under Rule 61(i)(2) does not apply to a claim that “the court lacked jurisdiction or to a colorable claim that there was a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.”⁴ The fundamental fairness exception, as set forth in Superior Court Criminal Rule 61(i)(5), is a narrow one and has been applied only in limited circumstances.”⁵ For example, the exception has been applied where the right relied upon was recognized for the first time after a direct appeal.⁶ This exception may also

¹ *Flamer v. State*, 585 A.2d 736, 746 (Del. 1990).

² 750 A.2d 521 (Del. 2000).

³ *Id.* At 528.

⁴ Superior Court Criminal Rule 61(i)(5).

⁵ *Younger v. State*, 580 A.2d 552, 555 (Del. 1990).

⁶ *Younger*, 580 A.2d at 555, citing *Teague v. Lane*, 489 U.S. 288, 297-299 (1989).

constitute a claim that there has been a mistaken waiver of important constitutional rights in exchange for a guilty plea.⁷

Cecil Bounds, who was 86-years old at the time of the offenses, testified that you came to his front door and asked to use his phone on July 25, 2001. When he refused to let you in, you intimated to him that you had a gun. Bounds then “let” you into his house. Once inside, according to Bounds, you told him that you needed money and asked him if he had a gun. Bounds told you that he had a few dollars that you could have and that he had a shotgun in his bedroom. You went into the bedroom and picked up the shotgun. After looking at it for a while, you put it back and then, according to Bounds, you tied him up with a telephone line and searched the house. Unable to find any money, you untied Bounds and told him to write a \$600 check payable to “cash.” Then you made Bounds get into his car. Once Bounds was in the car, you drove him to the bank where he cashed the check and turned over the money to you. You then drove to a remote spot, got out of the car and told Bounds how to get back home.

You have also not raised a claim that the Court lacked jurisdiction to convict you or a colorable claim that there was a miscarriage of justice. You were convicted of Robbery in the First Degree. You argue that there was no evidence of force. Your allegations are not supported by the evidence. Bounds testified that you tied him up and then forced him to go to the bank with you. This shows that you used force in order to rob Bounds. You were also convicted of Kidnaping in the Second Degree. The Court instructed the jury on the meaning of “restraint.” You argue that the Court should have instructed the jury on the meaning of “intentionally.” Given Bounds’ testimony, your conduct only could have been done intentionally and in no other way. You also argue that the

⁷ *Webster v. State*, 604 A.2d 1364, 1366 (Del. 1992).

evidence was not sufficient to convict you of this offense. Once again, your allegations are not supported by the evidence. Bounds testified that you tied him up and then forced him to go with you to the bank. “When a defendant argues that the evidence is insufficient to support a guilty verdict, ‘the relevant question is whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’”⁸ Given Bound’s testimony in this regard, the evidence against you was sufficient. You were also convicted of Possession of a Firearm During the Commission of a Felony. You argue that the Court should have instructed the jury on the meaning of “accessibility.” Cecil Bounds testified that you actually possessed the shotgun before you tied him up. Thus, it was obviously “accessible” to you. The allegations against your counsel are merely conclusory statements. As such, they do not fall within any of the exceptions to Rule 61(i)(2).

There is nothing in your claims about alleged errors in the jury instructions, sufficiency of the evidence and your counsel’s representation of you that even hints at constitutional violation which would undermine the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.

Your third motion for postconviction relief is denied.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

⁸ *Williams v. State*, 539 A.2d 164, 168 (Del. 1988) (*quoting Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).